

A. G. Contract No. KR89-2546-TRD
ECS File: JPA-89-102
Project: ACIR-10-3(323)C (333)
Section: I-10 - Elliot Rd TI

C 90-58

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
CITY OF TEMPE

THIS AGREEMENT is entered into October 3, 1990,
pursuant to Arizona Revised Statutes, Sections 11-951 through
11-954, as amended, between the STATE OF ARIZONA, acting by and
through its DEPARTMENT OF TRANSPORTATION (the "State") and the
CITY OF TEMPE, acting by and through its City Council (the
"City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has delegated
to the undersigned the authority to execute this agreement on
behalf of the State.

2. The City is empowered by Arizona Revised Statutes
Section 48-572 and City Charter Section 103 to enter into this
agreement and has by resolution, a copy of which is attached
hereto and made a part hereof, resolved to enter into this
agreement and has authorized the undersigned to execute this
agreement on behalf of the City.

3. Congress has authorized appropriations for, but not
limited to, the construction of streets and primary, feeder and
farm-to-market roads; the replacement of bridges; the
elimination of roadside obstacles; and the application of
pavement markings.

4. City and State desire to reconstruct the traffic
interchange at Elliot Road on I-10 estimated at \$10,000,000.00
for the benefit of the motoring public.

NO.	<u>15224</u>
FILED WITH SECRETARY OF STATE	
Date Filed	<u>10/03/90</u>
<u>Jim Shumway</u> Secretary of State	
By	<u>Vincent Greenwald</u>

5. Such project requires construction plans, estimates and specifications be prepared by the City and transmitted to the State. State to submit to the Federal Highway Administration (FHWA) for its approval.

6. The City, in order to obtain federal funds for the construction of the project, is willing to provide the State with City funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The work embraced in this agreement and the estimated cost are as follows: TRAFFIC INTERCHANGE RECONSTRUCTION

Estimated Project Cost	\$ 10,000,000.00
Estimated Construction Cost minus	
Construction Engineering Cost	8,695,652.00
Federal Aid Urban Funds	
@ 92.77% of \$3,233,804	3,000,000.00
City of Tempe Funds	
(7.23% of \$3,233,804) = \$233,804.00	
2% surcharge	+ 173,913.00*
Non Federal-Aid Funds	
(Difference between estimated	
construction cost and Federal Aid)	+ 5,695,652.00
Total City of Tempe Funds	= \$ 5,869,565.00

* 2% surcharge on the estimated construction cost as per Chief Deputy State Engineer memo of February 2, 1982.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the City, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project

Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of \$5,000,000.

2. Prior to the solicitation of bids, the City shall deposit funds with the State in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the City any part of the funds deposited by the City remaining after City's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way will be acquired prior to start of construction, including access control as appropriate.

4. Maintenance shall be in accordance with existing general maintenance agreement between the State and the City.

5. City will:

a. Provide to State a traffic operations analysis, a design concept report, a traffic control concept, construction plans and such other design documents required to construct the project.

b. Be responsible for providing preliminary and final design construction plans to State.

c. Be responsible for the design cost, as well as any additional costs attributable to City, incurred in the development of the project including contractor claims for extra compensation for delays.

d. Deposit funds in the amount of \$5,869,565.00 with State prior to the bid advertisement. The amount and timing of deposit is subject to final construction cost estimates.

e. Enter into agreements with the State as required to facilitate the project, to provide for traffic signals and landscaping maintenance.

6. State will:

a. Review design and study documents and provide comments as appropriate.

b. Call for bids and award one or more construction contracts for the project and administer same.

c. Be responsible for all construction engineering costs, as well as any additional costs attributable to State, incurred in the development of the project including contractor claims for extra compensation for delays.

d. Reimburse the City fifty percent (50%) for the construction cost of the project, or in an amount not to exceed \$5,000,000 whichever is less.

e. Conduct public hearings and provide environmental assessment as required for the project.

III. MISCELLANEOUS PROVISIONS

1. The cost of the work covered by this agreement is to be borne by FHWA, the State and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, the City agrees to furnish and provide State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

2. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement shall be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

6. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Engineering Consultant Services
206 S. 17th Avenue - 118E
Phoenix, Arizona 85007

City Manager
City of Tempe
31 East 5th Street
Tempe, AZ 85281

8. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF TEMPE

STATE OF ARIZONA

Department of Transportation

By *Harry E. Wiltch*

Mayor

Title

By *Robert P. Mickelson*

ROBERT P. MICKELSON

Deputy State Engineer

ATTEST:

Karen L. Birmingham
Deputy City Clerk

RESOLUTION

BE IT RESOLVED on this 23rd day of October 1989, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interest of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Tempe for the purpose of constructing improvements to the Elliot Road Interchange at Interstate 10.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.



CHARLES L. MILLER, Director
Arizona Department of
Transportation

RESOLUTION NO. 90.18

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA,
AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE STATE OF
ARIZONA, DEPARTMENT OF TRANSPORTATION

* * * * *

WHEREAS, the City of Tempe is preparing plans, estimates and specifications for the reconstruction of the Elliot Road T.I. on the I-10 Freeway, Project No. 896281 and

WHEREAS, the City of Tempe is desirous of obtaining federal funds for the construction of the project, and

WHEREAS, the Arizona Department of Transportation has prepared an agreement setting forth the provisions and responsibilities for construction of said project, and

WHEREAS, the Arizona Department of Transportation has estimated the costs of the project as follows:

Estimated Project Cost		\$10,000,000.00
Estimated Construction cost		
minus Construction		
Engineering Cost		8,695,652.00
Federal Aid Urban Funds		3,000,000.00
Non Federal-Aid Funds		
(Difference between estimated		
construction cost and Federal Aid	+	5,695,652.00
City of Tempe Funds	=	233,804.00
2% surcharge	=	<u>173.913.00</u>
Total City of Tempe Funds	=	\$ 6,103,369.00

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor of the City of Tempe, hereby be authorized to execute an agreement with the Arizona Department of Transportation setting forth the provisions and responsibilities for reconstruction of the Elliot Road T.I. on the I-10 Freeway.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA
this 19th day of April, 1990.

Harry E. Mitchell
Mayor

ATTEST:

Helen R. Fowler
City Clerk

APPROVED AS TO FORM:

David R. Maske
City Attorney

JRP:11

Attachment

I, Karen Brittingham, the Deputy City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be a true and exact copy of Resolution No. 90.18, passed and adopted at the Regular Council Meeting of April 19, 1990, by the Tempe City Council Tempe, AZ.

DATED this 5th day of July, 1990.

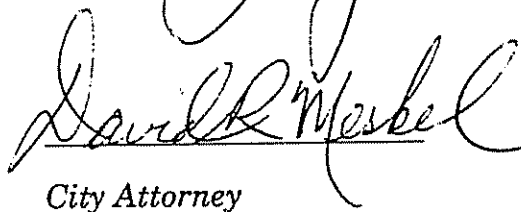
Karen Brittingham
Karen Brittingham
Deputy City Clerk

JPA 89-102

APPROVAL OF THE CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF TEMPE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 2nd day of July, 1990.


City Attorney



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A.G. Contract No. KR89-2546-TRD, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 21st day of September, 1990.

ROBERT K. CORBIN
Attorney General

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over the typed name.

JAMES R. REDPATH
Chief Counsel
Transportation Division